IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1944 OF 2004

Ashok Kumar G. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.
....
Mr. S.D. Bhosale for the Petitioner.
Mr. J.J. Pandian for Respondent No.1 and 6.
.....

CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

November 2, 2004.

P.C.:

The Central Administrative Tribunal, by an order dated 19th June 2003, dismissed the application filed by the Petitioner challenging the imposition of the penalty of removal from service, following disciplinary proceedings, on the charge that the Petitioner secured appointment as Substitute Pointsman by producing a fake and bogus letter of appointment dated 12th February 1987.

2. The Tribunal has noted in paragraph 3 of its order that in his statement dated 25th February 1998, the Petitioner clearly

admitted to the correctness of his previous statement dated 26th October 1988. The previous statement is annexed to the Paper-Book at Exh.G and Exh.H and in so far as is relevant, is as follows :

Exh.G.

"Q. No.6. In connection with letter given to you by Shri Ghadge or Shri Zharia or to any else?

Answer: I had paid a sum of Rs.3000/- to Shri Ghadge and he retained the said money with him. I am not aware and do not know whether the amount was paid to Shri Zharia.

Q. No.7. Can you say that the replies given by you to the aforesaid question are true/correct ? Do you want to add any thing else in addition to your replies ?

Answer: All the replies given by me are true and correct and I do not wish to add any thing more."

Exh.H.

"Q.1 You are shown statement given by you on 26.10.88 (P-15). Please say whether this statement is yours and the signature on it is also yours. Please also state whatever the contents given in the statement are correct ?

A. Yes. I restate that I was given the letter No.BB/P/640/GT/4 dt. 12.2.87 P 22 addressed to CYM BB VT by Shri Gadgil and with the same letter. I reported to CYM BB VT where I started working as substitute APM w. e. f. 12.2.87. At the time of handing over the letter, I paid Rs.3000/- to Shri Gadgil. He had also brought Casual labour Card in my name and given to me. I have not worked on Railways any time prior to 12.2.1987."

The Enquiry Officer has observed as follows :

"In his recorded statement Shri Ashok Kumar clearly admitted that appointment letter cited as Ex.P/1 is given to him by Shri Ghatge after paying Rs.3000/- as bribe. In

this statement he further admitted that he had never worked in the railway before 12/2/87 and his appointment as APM is based on Ex.P/1 i.e. Appointment letter given to him by Ghatge after paying bribe amount of Rs.3000/-. Shri Ashok Kumar admitted all these facts in his recorded statement on 26-1-88."

3. The Tribunal has declined to interfere with the penalty of removal on the aforesaid state of the record. We do not find that the conclusion of the Tribunal is perverse. No case for interference is made out. The Enquiry Officer was justified in relying upon the previous statement of the Petitioner.

4. The Supreme Court has held in **R. Vishwanatha Pillai vs. State of Kerala,** (2004) 2 SCC 105, that a person who has obtained appointment on the basis of a false certificate, cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution. The appointment is void from its inception and a Petitioner who obtained appointment by playing a fraud, is not entitled to the benefit of Government service. Though these observations were made in the context of an order of

appointment which was obtained on the basis of a false caste certificate, the principle would equally stand attracted in a case such as the present where the appointment letter is found to be vitiated on account of fraud.

5. We find no reason to interfere with the order of the Tribunal. The Writ Petition is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.